

**FILED**

May 21, 2003

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF **THE SUSPENSION**  
OR REVOCATION OF THE LICENSE OF

Administrative Action

PEDRO N. CAPOTE, M.D.  
License No. MA 36110

FINAL ORDER  
OF DISCIPLINE

TO PRACTICE MEDICINE AND SURGERY :  
IN THE **STATE OF NEW JERSEY**

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

**FINDINGS OF FACT**

1. Respondent, **Pedro N. Capote**, License No. MA 36110, is a physician licensed in the State of New Jersey and has been a licensee at all times relevant hereto. As a consequence of Respondent's failure to submit his biennial renewal in 1983, Respondent's license to practice medicine in the State of New Jersey was automatically suspended pursuant to N.J.S.A. 45:9-6.1 and could be restored pursuant to the statute upon payment of a fee.

2. On or about October 31, 2000 Respondent was notified by the Department of Health and Human Services that he was being excluded from participation in the Medicare, Medicaid and all Federal health care programs as defined in section 1128B(f) of the Social Security Act for a minimum mandatory period of five years

**CERTIFIED TRUE COPY**

due to his conviction in Broward County, Florida of a criminal offense related to the delivery of an item or service under the Medicaid Program. More specifically, on February 14, 2000, Respondent pled "no contest" to one count of Organized Scheme to Defraud/\$50,000.00 or more as filed in the Information.

3. As a result of the foregoing, Respondent has been excluded from participation in the Medicare, Medicaid and all Federal health care programs. As part of the plea agreement, Respondent may be subject to payment of court costs, restitution, prosecution and investigative costs as well as relinquishment of his Florida medical license and three years probation.

#### CONCLUSIONS OF LAW

1. The above action provided grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey based on his criminal conviction pursuant to N.J.S.A. 45:1-21(f).

2. The above action provides grounds for the suspension of Respondent's license to practice medicine and surgery in New Jersey in that it is based on findings that would give rise to discipline in this State for misconduct related to his criminal conviction pursuant to N.J.S.A. 45:1-21(g).

#### DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending Respondent's license to practice medicine and surgery in the State of New Jersey until he

demonstrates that he is no longer excluded from participating in the Medicare, Medicaid and all Federal health care programs. Said Provisional Order of Discipline was entered on August 15, 2002, and a copy served on Respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons thereof.

Respondent through counsel responded to the Provisional Order of Discipline by way of a September 13, 2002 submission stating that he believes that his criminal record could be sealed after he provided testimony during a trial that was to occur in October 2002. Therefore, Respondent argues that eventually he may be able to deny the existence of both the arrest and his guilty pleas. Respondent does agree that his 5 year exclusion from the federal healthcare programs provides grounds for this Board to take action against his New Jersey license. However, Respondent requests that the Board consider a 3 year suspension of his license rather than having his license suspended until such time as he can demonstrate that he is no longer excluded from participation in the Medicare, Medicaid and all Federal health care programs. Respondent further

requests that he not be required to apply and appear before a Committee of the Board prior to reinstatement.

The Board after considering Respondent's submission has determined to amend the Provisional Order of Discipline to impose a 3 year suspension of his licensure. The Board is of the opinion that the materials and facts presented allowed for a mitigation of the penalty. Respondent developed the underlying core facts of the conviction which revealed that Respondent was an employee of a lawfully incorporated entity which was not physician owned. Respondent therefore asserts he had no control over the billing procedures of the entity. The company's improper billing involved coding for physician assistant services which did not comport with Medicaid's requirement for direct physician supervision. The Board also considered that the State of Florida has consented to the sealing of the criminal record.

Further, the Board determined to maintain the requirement in the Provisional Order of Discipline that Respondent be required prior to resuming active practice in New Jersey, to appear before the Board (or a committee thereof) and can not be reinstated without such application to the Board. It is the opinion of the Board given Respondent's conduct and the fact that he has not registered in New Jersey since 1983 that it is not in the interest of the public's health, safety and welfare to allow reinstatement without an appearance. At said appearance the Respondent will need to demonstrate his fitness in order to resume practicing medicine in New Jersey.

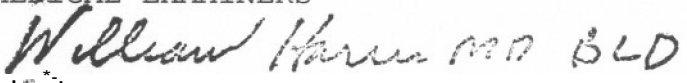
ACCORDINGLY, IT IS on this 21st day of May,  
2003, ORDERED that:

1. Respondent's license to practice medicine in the state of New Jersey be and hereby is suspended for 3 years effective upon filing of this Order.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to resume practice, and any practice in this State prior to said appearance shall constitute grounds for the a charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on Respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By :

  
\_\_\_\_\_  
William V. Harrer, M.D., B.L.D.  
Board President



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office Of Inspector General

OCT 31 2000

Washington, D.C. 20201

Capote N. Pedro, M.D  
10500 SW 97 Court  
Miami, FL 33176

Dear Dr. Pedro:

RE: OI File No. 4-00-41016-9

This is to notify **you** that you are being **excluded** from participation in the Medicare, Medicaid, and **all** Federal health care programs as defined in section 1128B(f) of the Social Security **Act (Act)** for the minimum mandatory period of 5 years. This action is being **taken under section 1128(a)(1)** of the **Act** (42 U.S.C. 1320a-7(a)) and is effective **20** days from **the date of this letter**. This **exclusion is due** to your conviction as defined in section 1128(i) (42 U.S.C. 1320a-7(i)), in the Circuit Court of the **Seventeenth Judicial Circuit in and for Broward Countl.** Florida, of a criminal offense related to the delivery of an item or service **under** the Medicaid program

A detailed explanation of the authority for this exclusion, its effect, and your appeal rights is enclosed and is incorporated as pan of this notice by specific reference. You should read this document carefully act upon it as necessary, and **retain** it for future reference

**REINSTATEMENT IS NOT AUTOMATIC. You must apply to the Office of Inspector General and be granted reinstatement. Obtaining a provider number from a Medicare contractor, a State agency, or a Federal health care program does not reinstate your eligibility to participate in those programs.**

Sincerely,

M. Joanne Lanahan  
Reviewing Official  
Health Care Program Exclusions  
Office of Counsel to the Inspector General

Enclosure

cc: Regional Inspector General  
for Investigations

EXHIBIT A